*** * REASONS FOR AMENDMENTS AND REMARKS * ***

Applicant wishes to acknowledge with appreciation the Examiner's analysis and efforts in examining this application. A sincere and earnest effort to respond to the Office Action has been made by Applicant. Accordingly, reconsideration and allowance of the subject claims are respectfully requested.

I. Status of Claims

Claims 5, 10, 14, 16-17, 21 and 29-30 have been cancelled herein without prejudice. Accordingly, claims 1-4, 6-9, 11-13, 15, 18-20 and 22-28 remain pending in this application.

II. Specification

The Examiner objected to the abstract as failing to comply with 37 CFR § 1.72(b) without providing any explanation why the abstract is not satisfactory. According to 37 CFR § 1.72(b), the abstract must meet four requirements: (1) start on a separate sheet; (2) use the heading of "Abstract" or "Abstract of the Disclosure"; (3) contain less than 150 words; and (4) may not include other parts of the application. Without any explanation for the objection, it is unclear why the Examiner objected to the abstract. The abstract begins on a separate sheet. It has a heading of "Abstract." The abstract has 56 words, which is less than the maximum 150 words. There are no other parts of the application in the abstract. Accordingly, Applicant respectfully submits that the abstract complies with 37 CFR § 1.72(b). If the Examiner continues

this objection, a further explanation why the abstract fails to comply with 37 CFR § 1.72(b) would be greatly appreciated.

The Examiner objected to the Background and Summary sections being combined. The specification has been amended to separate the Background and Summary sections. No new matter has been added.

III. Claim Rejections Under 35 U.S.C. § 101

The Office Action rejected Claims 1-30 under 35 U.S.C. § 101 as drawn to non-statutory subject matter. In view of the present amendment to independent claims 1, 11, and 20, these rejections are now moot. Therefore, Applicant respectfully requests withdrawal of these rejections.

IV. Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1-9 and 11-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Goetz *et al.* (U.S. Patent No. 6,421,650). In view of the amendments to independent claim 1, any further rejection would be respectfully traversed. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." See MPEP § 2131. Claims 1-9 and 11-17 include multiple limitations not disclosed in Goetz and thus the rejections should be withdrawn. Applicant has provided specific examples of elements in the claims that are clearly not present in Goetz. However, Applicant strongly emphasizes that one reviewing the prosecution history should not

interpret any of the examples Applicant has described herein in connection with distinguishing over Goetz as limiting to those specific features in isolation. Rather, Applicant asserts that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable.

Goetz

Goetz is a medication management system with three separate hardware components: (1) a patient component; (2) a physician component; and (3) a pharmacist component. The patient component will, among other functions, track and display the medication name & purpose, dosage, frequency, duration, possible side effects, record of medications taken and any special instructions for taking medications. A brief medical history, a log of medication consumption may also be maintained on the patient component. The physician component is preferably a hand held personal digital assistant device. The device may include medical data, such as a database of diagnoses and common illnesses and correlated potential medications that may be prescribed. The pharmacist component reads the physician prescription data and provides the data to the patient.

Claim 1

Claim 1 is directed to a web-based interface for use in accessing a repository server by a healthcare provider. The repository server is provided with health-related information of a plurality of patients. The web-based interface is adapted to facilitate access to the health-related

information on the repository server. In claim 1, the web-based interface includes at least one patient health record section and a banner section. The patient health record section is adapted to display health-related information of a selected patient retrieved from the repository server. The banner section is operative to display information based on the content of the patient health record section. The banner section includes an interactive communications portal for hosting a communications session with a drug provider that is selected based on prescription information in the patient health record section.

Claim 1 has been amended to include the limitation of claim 5; accordingly, claim 5 has been cancelled without prejudice. As amended, claim 1 includes the limitation (among other limitations) in which "the banner section includes an interactive communications portal for hosting a communications session with a drug provider that is selected based on prescription information in the patient health record section." Applicant respectfully submits that Goetz fails to teach this limitation of claim 1.

In the previous office action, the Examiner asserted that Goetz discloses this limitation in the discussion of claim 5. Office Action of 5/27/2009 at 9. This assertion is totally unsupported. The Examiner failed to provide any citation whatsoever in Goetz, which is clearly improper. See 37 C.F.R. § 1.104(c)(2) ("In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable.") (emphasis added). Clearly, the Goetz reference

is complex and includes multiple embodiments. The lack of any citation whatsoever is glaring and implicitly concedes that Goetz fails to disclose this limitation. Therefore, for at least these reasons, Applicant respectfully requests withdrawal of this rejection. Since claims 2-4 and 6-9 depend (either directly or indirectly) on claim 1, Applicant respectfully requests withdrawal of these rejections as well.

If for some reason (not within contemplation at this time) another Official Action is required, it is respectfully requested that it be provided in non-final form since the subject matter relied on for patentability was previously examined in claim 5 (now cancelled and incorporated into amended claim 1). It is respectfully noted that any new or different rationale for the rejection of this subject matter would be considered a new ground of rejection, which would necessitate a non-final opportunity to respond. For example, it is urged that any of: (i) changing prior art relied on, (ii) changing from a 102-based to a 103-based rejection, or (iii) changing sections referred to in the prior art, or (iv) changing the rationale for the motivation for a modification/combination would necessitate a non-final opportunity to respond. See also MPEP § 706.07(a): "a second or subsequent action on the merits ... should not be made final if it includes a rejection ... of any claim amended to include limitation which should reasonably have been expected to be claimed.

Claim 7

Claim 7 limits the banner section to require "a drug assistance request template, the drug assistance request template being automatically generated with a patient's health information based on the content of the patient health record section." The Examiner asserts that Goetz at Col. 5, lns. 35-39 and Col. 9, lns. 46-55 disclose this limitation. Applicant respectfully disagrees with this assertion and will address each portion of Goetz cited by the Examiner in turn.

Applicant respectfully submits that Col. 5, lns. 35-39 of Goetz, which is reproduced below for the Examiner's convenience, has absolutely nothing to do with the limitation cited in Claim 7:

> Physician Component
>
> The physician component 16 is preferably a hand held personal digital assistant device such as a Palm PC or Palm Pilot type device that receives the memory device 14 and reads and writes data from and to the memory device 14.

There is nothing in this portion of Goetz concerning the recited "drug assistance request template." Moreover, this citation to Goetz fails to disclose the limitation of a "drug assistance request template being automatically generated with a patient's health information based on the content of the patient health record section" as recited in claim 7.

The Examiner's other citation to Goetz, Col. 9, lns. 46-55, is equally inapplicable to the limitations recited in claim 7. This portion of Goetz is reproduced below for the Examiner's convenience:

> The physician component 102 is essentially a conventional personal digital assistant such as a Palm PC with the Windows CE operating system and particularly programmed for the medication management system application. FIGS. 9 through 24 show a number of exemplary screens that take the physician through a review of the patient's medical history, contact information, and facilitate the physician's diagnosis of an ailment and assist the physician in arriving at and prescribing an appropriate treatment for the patient's ailment.

This portion of Goetz fails to disclose the "drug assistance request template" recited in claim 7. Moreover, this citation to Goetz fails to disclose the limitation of a "drug assistance request template being automatically generated with a patient's health information based on the content of the patient health record section" as recited in claim 7. Accordingly, for at least these reasons, Applicant requests that this rejection be withdrawn.

Claim 8

Claim 8 further limits the banner section to include "physician-customizable drug advertising." Although Goetz discloses that the memory device may include an "advertising message for product sponsors," this falls short of disclosing advertising that is "physician-customizable" as recited in claim 8. Indeed, there is no customization mechanism for the advertising in Goetz. Accordingly, for at least these reasons, Applicant requests that this rejection be withdrawn.

Claim 9

Claim 9 has been amended to clarify that the banner section includes an alert banner

"configured to display a commonly misdiagnosed illness responsive to one or more medical conditions in the patient health record section." Claim 10, which depended on claim 9 and included a limitation concerning commonly misdiagnosed conditions, has been cancelled without prejudice. As discussed in the application, this type of alert banner may help avoid a misdiagnosis:

> [T]he alert may be activated when one or more of the medical conditions shown for the current patient have been flagged or are otherwise being monitored by these institutions. For example, if the CDC is concerned that doctors are making misdiagnoses by confusing Severe Acute Respiratory Syndrome (SARS) with the flu, an alert may be generated whenever the flu is entered as a patient's medical condition. A doctor reviewing the alert may realize that a misdiagnosis has been made and change their prescribed treatment.

Applicant respectfully disagrees with the Examiner's assertion that Goetz teaches an "alert banner displaying information based on possible illnesses related to the content of the patient health record section." Office Action of 5/27/2009 at 10. This portion of Goetz discusses a drug interaction detection feature that warns the pharmacist or physician if the prescription may interact with one of the patient's other prescriptions. Goetz at Col. 12, lns. 1-21. This is completely different that the claimed alert banner that warns a physician to a possible **misdiagnosis** responsive to medical conditions in the patient health record section. In Goetz, the prescription interaction alert has nothing to do with diagnosing the patient; even if a drug interaction is found in Goetz, the diagnosis remains the same. This stands in contrast to claim 10 in which the physician may change the **diagnosis** based on the information in the alert banner.

In the previous discussion of claim 10, which related to commonly misdiagnosed

illnesses, the Examiner conceded that Goetz "does not specifically disclose the alert banner further comprising information based on commonly misdiagnosed illnesses." Office Action of 5/27/2009 at 11. Instead of citing any other reference, the Examiner asserted that "it is well known in the art to have a display of information that alerts the user based upon information for commonly misdiagnosed illnesses, and official notice to that effect is hereby taken." *Id.* Applicant respectfully disagrees that this is well known in the art. There is a significant difference between a generic alert from a governmental agency that doctors are confusing a certain illness and a **targeted** alert at the point of care based on a patient's specific condition(s) in the patient health record section. This type of targeted alert responsive to condition(s) in the patient health record is certainly not well known. If the Examiner asserts official notice with respect to amended claim 9, it would be respectfully traversed and Applicant hereby requests the Examiner to produce authority. See MPEP § 2144.03 ("It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known."). Accordingly, for at least these reasons, Applicant requests that this rejection be withdrawn.

Claim 11

Independent claim 11 is directed to a system for providing health-related assistance based on information in an electronic health record. The system includes a repository server having health-related information of a plurality of patients and a web-based communication interface

adapted to receive health-related information from the repository server over a communication network. The web-based communication interface includes a patient health record section and a banner section. The system also includes computer-executable instructions for performing certain steps, including retrieving health-related information of a selected patient from the repository server over the communication network using the web-based communication interface. The instruction may include displaying at least a portion of the health-related information on the patient health record section and displaying information in the banner section based on the content of the patient health record section. The system may initiate a communications session with a drug provider over the communication network based on prescription information in the patient health record section, the banner section being an interactive communications portal for the communications session. Drug advertising that is displayed in the banner section may be customized in response to physician selection. The system also includes a processor for executing the computer executable instructions and a memory for storing the computer executable instructions.

As amended, claim 11 includes computer-executable instructions for "initiating a communications session with a drug provider over the communication network, the banner section being an interactive communications portal for the communications session." Applicant respectfully submits that Goetz fails to teach this limitation of claim 11. There is no such interactive communications portal disclosed in Goetz. For at least this reason, Applicant requests withdrawal of this rejection.

Claim 11 also includes computer-executable instructions for "customizing which drugs advertising is displayed in the banner section in response to physician selection." As discussed above, Goetz discloses an "advertising message for product sponsors," but there is no discussion that the advertising can be customized in response to physician selection, as provided in claim 11. For at least this reason, Applicant requests withdrawal of this rejection. Since claims 12, 13, 15, 18 and 19 depend (either directly or indirectly) on claim 11, Applicant respectfully requests withdrawal of these rejections as well.

V. Claim Rejections Under 35 U.S.C. § 103(a)

Claim 10 is rejected under 35 U.S.C. § 103(a) as being obvious under Goetz *et al.* (U.S. Patent No. 6,421,650) in view of official notice. Applicant has cancelled claim 10 without prejudice and therefore this rejection is moot. As discussed above with respect to claim 9, however, Applicant disagrees with the Examiner's use of official notice and requests the Examiner to produce authority.

Claim 19 was rejected under 35 U.S.C. § 103(a) as being obvious under Goetz *et al.* (U.S. Patent No. 6,421,650) in view of Reitberg (U.S. Publication No. 2002/0192159). Applicant respectfully traverses this rejection. To establish a *prima facie* case of obviousness, all the claim limitations must be taught or suggested by the prior art See MPEP § 2143.03. As noted above, independent claim 11 includes features not disclosed or suggested by Goetz. Therefore, this rejection should be withdrawn.

Claims 20-30 are rejected under 35 U.S.C. § 103(a) as being obvious under Goetz *et al.* (U.S. Patent No. 6,421,650) in view of Keresman (U.S. Patent No. 2001/0047281). Since claims 21 and 29-30 have been cancelled without prejudice, this rejection is moot with respect to those claims. With respect to claims 20 and 22-28, these rejections are respectfully traversed.

Independent claim 20 is directed to a system of providing health services to a patient. The system includes a web-based patient health information system that displays patient information via a browser interface and a server with a database of health-related information. The server is operable to communicate with the web-based patient health information system over a communication network. The system includes computer-executable instructions for performing certain steps, including retrieving at the patient information system a health record of a selected patient. The instructions also include displaying at least a portion of the health record on the browser interface and comparing the content to the database of health-related information. The system retrieves information from the database of health-related information that is related to the content and displays the health-related information in a banner via the browser interface. A drug assistance application is displayed when the banner is selected. The system automatically populates the drug assistance application with the selected patient's health information and connecting with a drug assistance program provider via the communication network. The drug assistance application is sent to the drug assistance program provider via the communication network. The system also includes a processor for executing the computer executable instructions and a memory for storing the computer executable instructions.

As amended, independent claim 20 includes computer-executable instructions for selecting the banner to perform an action including display of a drug assistance application, populating the drug assistance application automatically with the selected patient's health information, and connecting with a drug assistance program provider via the communication network. As noted above with respect to claim 7, Goetz fails to disclose a drug assistance request template that is automatically generated with a patient's health information based on the content of a patient health record section. The citations to Goetz with respect to claim 7 provided in the office action were total irrelevant. For at least this reason, Goetz fails to disclose the drug assistance application that is automatically populated and communicated to a drug assistance provider as recited in independent claim 11. Therefore, this rejection should be withdrawn. Since claims 22-28 depend (either directly or indirectly) on independent claim 20, Applicant respectfully requests withdrawal of these rejections as well.

V. Conclusion

If, upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact Applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in

connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-1010 (26880/100961) and please credit any excess fees to such deposit account.

Respectfully submitted,

/Michael E. Wever/
Michael E. Wever
Reg. No. 43984
Direct Line: (260) 425-4665